



State of Idaho

DEPARTMENT OF WATER RESOURCES

1341 Fillmore Street, Suite 200, Twin Falls ID 83301-3380

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SOUTHERN REGION

DIRK KEMPTHORNE
Governor

KARL J. DREHER
Director

July 26, 2005

MARK SKAGGS
SIX S RANCH LLC
1354 E SIX S RANCH RD
DECLO ID 83323

RE: Application for Permit No. **45-13852**

Dear Mr. Skaggs:

The Department of Water Resources acknowledges receipt of your water right application. Please refer to the above referenced number in all future correspondence regarding this application.

A legal notice of the application has been prepared for publication. Because your application is in excess of 10.0 cfs, this office has scheduled publication of the application in the South Idaho Press and also statewide in the Idaho Statesman, Lewiston Morning Tribune, Post Register, and Times News on 8/4 & 8/11/05. Submittal of protests to the application will be allowed for a period ending ten days after the second publication. **(August 22, 2005)**

If an application is protested you will be sent a copy of the protest(s). All protests must be resolved before the application can be considered for approval. If the protest(s) cannot be resolved voluntarily, the Department will conduct a conference and/or hearing on the matter.

If an application is not protested, it will be forwarded to our State Office in Boise for final processing. The State Office will notify you of any action taken on the application and will send you a copy of the permit if approved. A typical processing time for an un-protested application is about eight weeks.

Please be advised that we also need additional information regarding the requirements of Water Appropriation Rule 040.05 prior to the application leaving the Regional Office. Enclosed is a copy of Rule 040.05 with the information highlighted that needs to be submitted for the Department's consideration in the processing of your application.

Please feel free to contact this office if you have any questions.

Sincerely,

Mary A. Baldwin
Administrative Assistant I

cc:
TRAVIS L. THOMPSON
BARKER ROSHOLT & SIMPSON LLP
PO BOX 485
TWIN FALLS ID 83303-485

b. The burden of coming forward with evidence is divided between the applicant and the protestant as follows:

i. The applicant shall bear the initial burden of coming forward with evidence for the evaluation of criteria (a) through (d) of Section 42-203A(5), Idaho Code; (7-1-93)

ii. The applicant shall bear the initial burden of coming forward with evidence for the evaluation of criterion (e) of Section 42-203A(5), Idaho Code, as to any factor affecting local public interest of which he is knowledgeable or reasonably can be expected to be knowledgeable. The protestant shall bear the initial burden of coming forward with evidence for those factors relevant to criterion (e) of Section 42-203A(5), Idaho Code, of which the protestant can reasonably be expected to be more cognizant than the applicant. (7-1-93)

iii. The protestant shall bear the initial burden of coming forward with evidence for the evaluation of the public interest criteria of Section 42-203C(2), Idaho Code, and of demonstrating a significant reduction, except that the applicant shall provide details of the proposed design, construction, and operation of the project and directly associated operations to allow the impact of the project to be evaluated. (7-1-93)

c. The applicant has the ultimate burden of persuasion for the criteria of Section 42-203A, Idaho Code, and the protestant has the ultimate burden of persuasion for the criteria of Section 42-203C, Idaho Code. (7-1-93)

d. For unprotested applications or permits to be reprocessed, the director will evaluate the application, information submitted pursuant to Rule 40.05.c. and information in the files and records of the department, and the results of any studies the department may conduct to determine compliance with the appropriate criteria. (7-1-93)

e. In protested matters the director will take official notice of information as described in the department's adopted Rules of Procedure, and will, prior to considering, circulate to the parties information from department studies and field examinations concerning the protested application or permit being reprocessed, if such information has not otherwise been made a part of the hearing record. (7-1-93)

05. Additional Information Requirements. (7-1-93)

a. For unprotested applications and permits being reprocessed, the additional information required by Rule 040.05.c. shall be submitted within thirty (30) days after the director notifies the applicant that the application or permit is being reviewed for decision. The director may extend the time within which to submit the information upon request by the applicant and upon a showing of good cause. Failure to submit the required information within the time period allowed will be cause for the director to void an application or to advance the priority of a permit being reprocessed by the number of days that the information submittal is late. The director will provide opportunity for hearing as provided in Section 42-1701A, Idaho Code.
(7-1-93)

b. For protested applications or protested permits being reprocessed, the information required by Rule 040.05.c. may be requested by the director to be submitted within thirty (30) days after notification by the director, may be made a part of the record of the hearing held to consider the protest, or may be made available in accordance with any pre-hearing discovery procedures. Failure to submit the required information within the time period allowed will be cause for the director to void an application or to advance the priority of a permit being reprocessed by the number of days that the information submittal is late.
(7-1-93)

c. The following information shall be submitted for applications to appropriate unappropriated water or trust water and for permits being reprocessed for trust water. The additional information submittal requirements of this rule are waived for filings which seek to appropriate five (5) cfs or less or storage of five hundred acre-feet (500 A-F) or less and for filings seeking reallocation of trust water which the director determines will reduce the flow of the Snake River measured at Murphy Gauge by not more than two (2) acre-feet per day. For filings proposing irrigation as a purpose of use, the additional information is required if more than two hundred (200) acres will be irrigated. However, the director may specifically request submittal of any of the following information for any filing, as he determines necessary. Information relative to the effect on existing water rights, Section 42-203A(5)(a), Idaho Code, shall be submitted as follows:
(7-1-93)

i. For applications appropriating springs or surface streams with 5 or fewer existing users, either the identification number, or the name and address of the user, and the location of

the point of diversion and nature of use for each existing water right shall be submitted. (7-1-93)

ii. For applications appropriating groundwater, a plat shall be submitted locating the proposed well relative to all existing wells and springs and permitted wells within a one-half mile radius of the proposed well. (7-1-93)

iii. Information shall be submitted concerning any design, construction, or operation techniques which will be employed to eliminate or reduce the impact on other water rights. (7-1-93)

d. Information relative to sufficiency of water supply, Section 42-203A(5)(b), Idaho Code, shall be submitted as follows:

i. Information shall be submitted on the water requirements of the proposed project, including, but not limited to, the required diversion rate during the peak use period and the average use period, the volume to be diverted per year, the period of year that water is required, and the volume of water that will be consumptively used per year. (7-1-93)

ii. Information shall be submitted on the quantity of water available from the source applied for, including, but not limited to, information concerning flow rates for surface water sources available during periods of peak and average project water demand, information concerning the properties of the aquifers that water is to be taken from for groundwater sources, and information on other sources of supply that may be used to supplement the applied for water source. (7-1-93)

e. Information relative to good faith, delay, or speculative purposes of the applicant, Section 42-203A(5)(c), Idaho Code, shall be submitted as follows: (7-1-93)

i. The applicant shall submit copies of deeds, leases, easements or applications for rights-of-way from federal or state agencies documenting a possessory interest in the lands necessary for all project facilities and the place of use or if such interest can be obtained by eminent domain proceedings the applicant must show that appropriate actions are being taken to obtain the interest. Applicants for hydropower uses shall also submit information required to demonstrate compliance with Sections 42-205 and 42-206, Idaho Code. (7-1-93)

ii. The applicant shall submit copies of applications for other needed permits, licenses and approvals, and must keep the department apprised of the status of the applications and any subsequent approvals or denials. (7-1-93)

f. Information Relative to Financial Resources, Section 42-203A(5)(d), Idaho Code, shall be submitted as follows: (7-1-93)

i. The applicant shall submit a current financial statement certified to show the accuracy of the information contained therein, or a financial commitment letter along with the financial statement of the lender or other evidence to show that it is reasonably probable that financing will be available to appropriate the water and apply it to the beneficial use proposed. (7-1-93)

ii. The applicant shall submit plans and specifications along with estimated construction costs for the project works. The plans shall be definite enough to allow for determination of project impacts and implications. (7-1-93)

g. Information Relative to Conflict with the Local Public Interest, Section 42-203A(5)(e), Idaho Code, shall be submitted as follows: The applicant shall seek comment and shall submit all letters of comment on the effects of the construction and operation of the proposed project from the governing body of the city and/or county and tribal reservation within which the point of diversion and place of use are located, the Idaho Department of Fish and Game, the Idaho Department of Health and Welfare, Division of Environment, and any irrigation district or canal company within which the proposed project is located and from other entities as determined by the director. (7-1-93)

h. The following information Relative to the Public Interest Criteria of Section 42-203C(2), Idaho Code, shall be submitted by an applicant seeking reallocation of trust water for a project which the director determines will reduce the flow of the Snake River by more than two (2) acre-feet per day. For filings proposing irrigation as a purpose of use, the additional information is required if more than two hundred (200) acres will be irrigated. The director may request any or all of the following information for any filing seeking the reallocation of trust water. (7-1-93)

GUIDELINE FOR SUBMITTING ADDITIONAL INFORMATION

This outline is intended to assist you with providing the additional information required under Rule 40 of the Department of Water Resources and Idaho Code, Section 42-203A(5)(a) which may help answer questions as to the type of information you should submit. The outline below follows the same order as the attached rules. Please take the time to review the outline. Much of the information requested under Rule 40 may already be available to you. Gathering the necessary information may be of benefit to you in planning the proposed development.

Rule 040.05.c and Idaho Code, Section 42-203A(5)(a) Information relative to effects on existing rights:

- i. If diverting from a surface water source with 5 or fewer existing users, submit the water right numbers held by those users if available.

If not available, submit the names and addresses of those users and describe the location of their diversions and types of use associated with those diversions.

- ii. If you are diverting from a groundwater source, submit a map locating your proposed well and all other wells within a 1/2 mile radius of your well. It would be helpful to describe the use from those wells (i.e.; domestic, irrigation etc.). You are not required to submit a map if there are no wells within the 1/2 mile radius, but you should indicate if there are no existing wells within that radius, if that indeed is the case.

- iii. This rule seeks general information about the type of irrigation system you intend to install and how the project may affect other users. If you feel your proposed project will not affect other users, then explain why. You may describe any techniques or equipment you intend to employ which may reduce impacts on other water rights or promote water conservation.

Rule 040.05.d and Idaho Code, Section 42-203A(5)(b) Information relative to sufficiency of water supply:

- i. Provide projections for your peak and average water demands. While your well or diversion may not yet be completed, you should be able to estimate project demand based on size of project (or number of acres irrigated), type or texture of local soils, type of crops grown, and type of irrigation system used. Demand projections should be given in terms of flow rate (cfs or gpm) and annual volume diverted (acre-feet).

Example: A 40 acre tract with 6 handlines and 20 heads/line discharging 3 gpm/head would produce a total flow rate of about 360 gpm or 0.8 cfs (1 in/acre). This flow rate multiplied by average number of hours per set, sets per irrigation and irrigations per year provides number of acre-feet per year or annual volume.

- ii. You should be able to provide some basic information about the nature of the water supply. If the diversion is from a surface water source for example, you should provide stream flow data or estimate the amount of stream flow available for diversion and describe generally the seasonal availability of water. If you are diverting from a groundwater source, you should be able to generally describe the aquifer which you plan to divert from, i.e.; deep confined or shallow unconfined aquifer, depth to water level or depth to aquifer, known yields from wells within the same aquifer etc.

Rule 040.05.e and Idaho Code, Section 42-203A(5)(c) Information relative to good faith, delay, or speculative purposes of the applicant:

- i. If you do not own the land to be irrigated and/or where the point of diversion is located, you must submit copies of lease agreements, easements or rights-of-way etc. If you are the owner of the place of use and point of diversion, documentation of ownership is not required.
- ii. If applicable, submit copies of applications for permits or approvals which are needed from other government agencies or individuals in order to complete the water development project.

Rule 040.05.f and Idaho Code, Section 43-203A(5)(d) Information relative to financial resources:

- i and ii. Submit a current financial statement or other statement describing how you will finance the project. You must also submit plans and specifications along with basic estimates of construction and equipment costs of the proposed project.

Rule 040.05.g and Idaho Code, Section 42-203A(5)(e) Information relative to conflict with the local public interest:

- i. You, as the applicant, bear the initial burden of coming forward with evidence as to whether your proposed project may have any affect concerning local public interest. If you have any reason to believe that the proposed project under your application may be of concern to any local individuals, governments, tribal reservations, irrigation districts, the State Fish and Game Department, or Health and Welfare Department, then you are responsible for seeking comments from those individuals or groups. This requirement is mandatory for projects located within irrigation districts, canal companies or tribal reservations (failure to obtain comments from the irrigation district, canal company or reservation will delay approval of the application.). All comments must be submitted to the Department of Water Resources.

IDAHO DEPARTMENT OF WATER RESOURCES RULES AND REGULATIONS

040.05.c

Information to be submitted

The following information shall be submitted for applications to appropriate unappropriated water or trust water and for permits being reprocessed for trust water. The additional information submittal requirements of this rule are waived for filings which seek to appropriate five (5) cfs or less or storage of five hundred acre-feet (500 A-F) or less and for filings seeking reallocation of trust water which the director determines will reduce the flow of the Snake River measured at Murphy Gauge by not more than two (2) acre-feet per day. For filings proposing irrigation as a purpose of use, the additional information is required if more than 200 acres will be irrigated. However, the director may specifically request submittal of any of the following information for any filing, as he determines necessary.

040.05.i

For applications appropriating springs or surface streams with 5 or fewer existing users, either the identification number, or the name and address of the user, and the location of the point of diversion and nature of use for each existing water right shall be submitted.

040.05.ii

For applications appropriating groundwater, a plat shall be submitted locating the proposed well relative to all existing wells and springs and permitted wells within a one-half mile radius of the proposed well.

040.05.c.iii

Information shall be submitted concerning any design, construction, or operation techniques which will be employed to eliminate or reduce the impact on other water rights.

040.05.d

Information relative to sufficiency of water supply, Section 42-203A(5)(b), Idaho Code, shall be submitted as follows:

040.05.d.i

Information shall be submitted on the water requirements of the proposed project, including, but not limited to, the required diversion rate during the peak use period and the average use period, the volume to be diverted per year, the period of year that water is required, and the volume of water that will be consumptively used per year.

040.05.d.ii

Information shall be submitted on the quantity of water available from the source applied for, including, but not limited to, information concerning flow rates for surface water sources available during periods of peak and average project water demand, information concerning the properties of the aquifers that water is to be taken from for groundwater sources, and information on other sources of supply that may be used to supplement the applied for water source.

040.05.e

Information relative to good faith, delay, or speculative purposes of the applicant, Section 42-203A(5)(c), Idaho Code, shall be submitted as follows:

040.05.e.i

The applicant shall submit copies of deeds, leases, easements or applications for rights-of-way from federal or state agencies documenting a possessory interest in the lands necessary for all project facilities and the place of use or if such interest can be obtained by eminent domain proceedings the applicant must show that appropriate actions are being taken to obtain the interest. Applicants for hydropower uses shall also submit information required to demonstrate compliance with Sections 42-205 and 42-206, Idaho Code.

- 040.05.e.ii The applicant shall submit copies of applications for other needed permits, licenses and approvals, and must keep the department apprised of the status of the applications and any subsequent approvals or denials.
- 040.05.f Information Relative to Financial Resources, Section 42-203A(5) (d), Idaho Code, shall be submitted as follows:
- 040.05.f.i The applicant shall submit a current financial statement certified to show the accuracy of the information contained therein, or a financial commitment letter along with the financial statement of the lender or other evidence to show that it is reasonably probable that financing will be available to appropriate the water and apply it to the beneficial use proposed.
- 040.05.f.ii The applicant shall submit plans and specifications along with estimated construction costs for the project works. The plans shall be definite enough to allow for determination of project impacts and implications.
- 040.05.g Information Relative to Conflict with the Local Public Interest, Section 42-203A(5) (e), Idaho Code, shall be submitted as follows:
- The applicant shall seek comment and shall submit all letters of comment on the effects of the construction and operation of the proposed project from the governing body of the city and/or county and tribal reservation within which the point of diversion and place of use are located, the Idaho Department of Fish and Game, the Idaho Department of Health and Welfare, Division of Environment, and any irrigation district or canal company within which the proposed project is located and from other entities as determined by the director.
- 040.05.h The following information Relative to the Public Interest Criteria of Section 42-203C(2), Idaho Code, shall be submitted by an applicant seeking reallocation of trust water for a project which the director determines will reduce the flow of the Snake River by more than two (2) acre-feet per day. For filings proposing irrigation as a purpose of use, the additional information is required if more than 200 acres will be irrigated. The director may request any or all of the following information for any filing seeking the reallocation of trust water.
- 040.05.h.i A project design and estimate of cost of development shall be submitted. For applications appropriating more than 25 cfs, or 10,000 AF of storage, or generating more than 5 megawatts, the information shall be prepared and submitted by a qualified engineer licensed under the provisions of Chapter 12, Title 54, Idaho Code, unless waived by the director. The design shall be definite enough to reflect the project's impacts and implications as required in subsequent rules.
- 040.05.h.ii If the project proposes development for irrigation purposes, information shall be submitted on crop rotation, including acreages, for lands when newly developed.
- 040.05.h.iii Information shall be submitted concerning the number and kinds of jobs that will be created or eliminated as a direct result of project development including both the construction and operating phases of the project. If jobs are seasonal, the estimated number of months per year of employment shall be submitted.

- 040.05.h.iv For applications or permits being reprocessed for more than 25 cfs, or more than 10,000 AF of storage, or more than 5 megawatts, information shall be submitted concerning the changes to community services that will be required during the construction and operation phases of the project including, but not limited to, changes to schools, roads, housing, public utilities and public health and safety facilities, if any.
- 040.05.h.v Information shall be submitted concerning the source of energy for diverting and using water for the project, the estimated instantaneous demand and total amount of energy that will be used, the efficiency of use, and energy conservation methods.
- 040.05.h.vi Information shall be submitted concerning the location, amount, and quality of return flow water, and any water conservation features of the proposed project.
- 040.05.h.vii If the project proposes irrigation as a use, information shall be submitted concerning the kinship, if any, of the operator of the land to be irrigated by the project to the applicant, the location and acreage of other irrigated lands owned, leased, or rented by the applicant, the names, addresses and number of shares held by each shareholder if the applicant is a corporation, evidence of tax-exempt status if a corporation is so claiming, a soil survey prepared in accordance with the U.S. Soil Conservation Service irrigable land classification system, and a schedule for bringing into production the project lands.